

**United States Department of Labor
Employees' Compensation Appeals Board**

B.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Houston, TX, Employer**

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**Docket No. 21-1185
Issued: March 4, 2022**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On July 29, 2021 appellant filed a timely appeal from an April 15, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty on February 18, 2021, as alleged.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the April 15, 2021 decision, OWCP received additional evidence. The Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On March 9, 2021 appellant, then a 29-year-old city carrier, filed a traumatic injury claim (Form CA-1) alleging that she suffered a “traumatic injury” on February 18, 2021 when she was robbed at gun point by two male suspects while in the performance of duty. On the reverse side of the claim form the employing establishment acknowledged that she was injured in the performance of duty and that its knowledge of the facts of her injury was consistent with her statements. Appellant stopped work on February 19, 2021.

A February 18, 2021 police report noted that appellant was robbed at gun point by two male suspects who fled the scene.

In a development letter dated March 12, 2021, OWCP informed appellant that it had received no medical evidence in support of her traumatic injury claim. It advised her of the type of factual and medical evidence needed to establish her claim and provided a questionnaire for her completion. OWCP also requested a narrative medical report from appellant’s treating physician, which contains a detailed description of findings and a diagnosis, explaining how the claimed employment incident caused, contributed to, or aggravated her medical conditions. It afforded her 30 days to submit the necessary evidence. Appellant did not submit a response.

By decision dated April 15, 2021, OWCP denied appellant’s traumatic injury claim, finding that she had not established the factual component of her claim, as she had not provided evidence or a statement explaining how she was injured as a result of the alleged employment incident. It noted that she had not responded to the March 12, 2021 development letter. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

³ *Supra* note 1.

⁴ *F.H.*, Docket No.18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁷ Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged.⁸ Second, the employee must submit sufficient evidence to establish that the employment incident caused a personal injury.⁹

To establish that an injury occurred as alleged, the injury need not be confirmed by eyewitnesses, but the employee's statements must be consistent with the surrounding facts and circumstances and his or her subsequent course of action. The employee has not met his or her burden when there are such inconsistencies in the evidence as to cast serious doubt on the validity of the claim. Such circumstances as late notification of injury, lack of confirmation of injury, continuing to work without apparent difficulty following the alleged injury, and failure to obtain medical treatment may, if otherwise unexplained, cast sufficient doubt on the employee's statements in determining whether a *prima facie* case has been established.¹⁰ An employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.¹¹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a traumatic injury in the performance of duty on February 18, 2021, as alleged.

In her Form CA-1, appellant indicated that she was robbed at gunpoint on February 18, 2021 by two male suspects, which was confirmed by a police report of even date. However, she did not provide an explanation as to how she was injured or what body part was injured as a result of the alleged employment incident. In a development letter dated March 12, 2021, OWCP requested that appellant submit clarifying information describing how and when her claimed injury occurred and provided a questionnaire for her completion. However, appellant did not complete and return the March 12, 2021 development questionnaire. Therefore, she has failed to present a clear factual statement in the record describing the specific alleged employment-related incident alleged to have caused or contributed to her claimed medical condition.¹² As she has not responded to the request for factual information to describe the employment incident and circumstances

⁷ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *T.H.*, 59 ECAB 388, 393-94 (2008).

⁸ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁹ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *John J. Carlone*, 41 ECAB 354 (1989).

¹⁰ *C.M.*, Docket No. 20-1519 (issued March 22, 2021); *Betty J. Smith*, 54 ECAB 174 (2002).

¹¹ *See M.C.*, Docket No. 18-1278 (issued March 7, 2019); *D.B.*, 58 ECAB 464, 466-67 (2007).

¹² *See D.C.*, Docket No. 18-0082 (issued July 12, 2018).

surrounding her alleged injury, the Board finds that appellant has not established that a traumatic injury occurred in the performance of duty on February 18, 2021, as alleged.¹³

The Board further finds that, because appellant failed to establish the first component of fact of injury, it is unnecessary to discuss whether she submitted medical evidence sufficient to establish that a medical condition existed and whether the condition was causally related to the employment factors as alleged.¹⁴ Thus, the Board finds that appellant has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish an injury in the performance of duty, as alleged.

¹³ See *H.B.*, Docket No. 18-0278 (issued June 20, 2018); *John R. Black*, 49 ECAB 624 (1998); *Judy Bryant*, 40 ECAB 207 (1988); *Martha G. List*, 26 ECAB 200 (1974).

¹⁴ See *R.L.*, Docket No. 17-1670 (issued December 14, 2018); *Dennis M. Mascarenas*, 49 ECAB 215, 218 (1997) (as appellant failed to establish that the claimed event occurred as alleged, it is unnecessary to discuss the probative value of medical evidence).

ORDER

IT IS HEREBY ORDERED THAT the April 15, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 4, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board